

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

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Bob Holden, Governor • Stephen M. Mahfood, Director

March 3, 2004

Mr. Michael W. Owen, Director
Office of Legacy Management
U. S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Dear Mr. Owen:

I am responding to your letter dated February 20, 2004 to Stephen M. Mahfood, Director of the Missouri Department of Natural Resources. Your letter covers issues at the Weldon Spring site which are very similar to those raised in a January letter by David Geiser, of your staff. Therefore, through this letter, I am responding to both of you. Despite the fact that the Final Remedial Action for the Groundwater Operable Unit (GWOU) Record of Decision (ROD) has now been signed by the Department of Energy (DOE) and the Environmental Protection Agency (EPA) without concurrence by the state of Missouri, I believe it is necessary that I further clarify some of the points made in our comment letter on the draft ROD document. I want to make sure there is no misunderstanding about the issues that are our primary concern. The state was not able to concur with this ROD for the Groundwater Operable Unit primarily due to one main issue as explained below:

We cannot agree to leaving contaminated groundwater at a site where the contaminant plumes have already migrated off site to property owned by others without confirming that a sound monitoring plan will be in place to monitor the groundwater plumes and prove that they are truly diminishing in size and concentration levels over time. At the Weldon Spring site, contamination is expected to attenuate (clean up through dilution and dispersion) over the next 100 years; however, we must be sure that it does just that and does not pose unacceptable risks for the people that live and work in close proximity to this site. These monitoring details are not part of the final ROD document as presented by DOE. Therefore, we find it difficult to concur with the remedy. DOE and EPA have agreed to define that detail at a later time in the Remedial Design/Remedial Action (RD/RA) document. The state, therefore, requests that we have a legal, meaningful role in the process to define those details on behalf of the Missouri citizens and also share that role in the finalization of a Long Term Monitoring and Surveillance Plan (LTMSMP) that will identify future roles and responsibilities of the care for the disposal cell and associated properties.

Our concern is a simple issue. The state of Missouri wants to be an official partner in the final decisions at this site. We believe that cooperation between the state, the EPA and the DOE is in the best interest of safe, long term management of the Weldon Spring Site. EPA has no significant differences or objections to including the MDNR in a new or revised Federal Facilities Agreement

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for this site. The DOE has historically resisted the concept of including the department as a partner. However, MDNR has been encouraged by recent conversations initiated by EPA with DOE to formalize and acknowledge the state's meaningful role in site closure and future long-term management. We commend the DOE for reconsidering this option and we look forward to continuing these discussions and finalizing the agreement.

For additional clarification, I made a list of the following summarized points for your consideration.

1. The department and the EPA agree on the terms of a new FFA that includes the state as a formal partner. The state's expectation was that this FFA would be signed concurrent with the ROD for the GWOU; but that did not occur.
2. Because the ROD for the GWOU has already been signed and a new FFA has not been drafted, the state is also willing to consider a stand alone interim agreement to give the department a meaningful role in developing and finalizing the design of a monitoring network and the long-term care of this site. Productive discussions are currently underway to create this agreement.
3. Per recent comments, it is evident that the Weldon spring Citizen's Commission (WSCC) supports all government agencies (the department, the EPA and the DOE) working together to resolve the detailed design of the groundwater remedy. The Commission recognizes the value of collaboration.
4. DOE has never shared any specific examples of where they believe the state has been less stringent with remediation requirements, despite requests of this information by the state. The department has not expected anything less protective at other contaminated sites in the state than what we are requesting at the Weldon Spring site. Obviously, the type of contaminants and the site-specific hydrogeologic conditions always influence the amount of exploration and monitoring required at any particular site. We have agreed on numerous occasions with DOE that the site-specific hydrogeology at Weldon Spring site is complex; and therefore, we believe a more conservative monitoring plan is necessary to be comfortable that the remedy is successful. The DOE wants to say the physical site conditions are too complicated to clean up the groundwater, but will not recognize that those circumstances also mean a more detailed monitoring program is appropriate.
5. The Missouri Department of Conservation (MDC) has been a good neighbor to the Weldon Spring site and the DOE is fortunate that effected land is in public ownership adjacent to the site because the contaminated groundwater has moved beyond site boundaries and impacted the groundwater beneath MDC property. I know that the MDC must appreciate the improvements that the DOE has helped them to construct in the Busch Wildlife Area. However, MDC remains concerned that they will not be able to use the groundwater resources beneath their property over the next 100 years, which is the timeframe that the DOE says it will take for the

contaminants to attenuate. The MDC has testified to these concerns at public meetings and are in the process of evaluating the damages associated with the degradation of their groundwater.

6. Institutional controls on impacted property remain unresolved. In December of 2002, the department provided DOE with significant information on this issue and coordinated several meetings with MDC and Missouri Department of Transportation (MoDOT), to identify needs. At the request of the Weldon Spring Citizen's Commission, we also sent considerable information relating to the Well Driller's Law and how that may apply to institutional controls near this site. We have also requested that attorneys from each agency need to discuss appropriate legal issues associated with implementing institutional controls so we can all move forward. As part of the groundwater remedy, it is clearly the DOE's responsibility to establish and identify institutional controls where they have degraded resources. Despite having given this information and having made requests for discussion with DOE's legal staff, DOE continues to assert that we are not cooperating to work toward establishment of the institutional controls. The department is not stopping this process; in fact, we are concerned that the issue of institutional controls has not yet been resolved and have attempted to help move the process forward. Obviously, we have all become frustrated.
7. You note the importance of completing the "few" remaining items. This has been and remains this department's goal, which is why we ask that DOE work cooperatively to expedite amending the FFA and include the state in development and finalization of the groundwater monitoring network and long-term stewardship plan.

We look forward to working with you toward mutually agreeable decisions. We commend you and your staff for recent progress and cooperation. If additional clarification is needed beyond what this letter provides, please call me at your earliest convenience at (573) 368-2101.

Sincerely,

GEOLOGICAL SURVEY AND RESOURCE ASSESSMENT DIVISION

ORIGINAL SIGNED BY MIMI GARSTANG

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